IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc. No.122-MA of 2006
Date of Decision: November 23, 2006

State of Haryana

.....Appellant

VERSUS

1.Ram Kumar son of Sh. Kali Ram
2.Raj Kumari wife of Sh.Ram Kumar
3.Sadhu Ram son of Sh.Dhan Singh
4.Gian Ram son of Sh.Telu Ram
all residents of Village Kharal, District Jind.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr. PS Sullar, DAG, Haryana.

Mr.Sandeep Singh, Advocate
for the respondents.

R S Madan, J.

By this order we propose to dispose of Criminal Misc.No.122-MA of 2006, which has arisen out of the judgment dated 19-11-2005 rendered by the Additional Sessions Judge, Jind in a Sessions case No.116 of 12-8-2003 whereby he acquitted the accused by giving them the benefit of doubt.

In brief, the prosecution case is that Smt.Sona Devi, wife of deceased Balwan, approached complainant-Punjaba the elder brother of deceased Balwan, resident of Village Andana situated in the revenue estate of Village Sangrur (Punjab) and informed him that deceased Balwan had

gone at mid night but he did not return home in the morning. The complainant-Punjaba went out in search of his brother with the assistance of Bhira son of Sunder where they met Lilu son of Ram Chander during the search exercise who told them that he had seen accused Raj Kumar, Jogia, Sadhu, Ram Kumar, his wife Raj Kumari and their daughter Ritu beating up Balwan and taking him to the house of Ram Kumar at about 1/1.30 a.m. He confronted the accused but they told him that they were teaching Balwan appropriate lesson for sneaking into the house of accused Ram Kumar.

It is further the case of the prosecution that deceased Balwan had developed illicit relations with Kumari Ritu daughter of accused Ram Kumar. Complainant-Punjaba along with Bhira and Lilu went to the house of accused Ram Kumar to know the whereabouts of Balwan (deceased) where they found the dead body of Balwan lying near the Verandah of his house. His both legs were tied to a pillar with the help of a rope. His hands were found tied behind his back. There were marks of injury visible all over his person. Accused-Ram Kumar, Giani, Sadhu, Jogi, Raj Kumar and Ritu were sitting beside the dead body. They told the complainant that the inevitable had happened. On hearing this, Punjaba-complainant asked his companions Bhira and Lilu to stay back whereas he went to his house and informed the members of his family about the incident. He then left for the police station Dhamtaan along with Lilu to lodge the report with the police. A case for the commission of the offences punishable under Sections 148, 302 and 342 read with Section 149 of the Indian Penal Code was registered and the matter was investigated.

During investigation, statements of various witnesses were recorded and Kumari Ritu, Raj Kumar and Jogi Ram were found

innocent in the police investigation and as such they are not arrested by the police.

During the investigation of the case, blood stained clothes of the deceased were recovered. Accused Ram Kumar, Sadhu Ram and Raj Kumari were arrested on 12-05-2003. Accused-Ram Kumar and his wife Raj Rani got recovered the stick and the pestle used by them for allegedly beating to death deceased Balwan Singh which were sealed in a parcel and were seized in the presence of the witnesses. Accused-Giani Ram was arrested on 18-5-2003. All the sealed parcels were sent to the laboratory for chemical analysis.

On completion of the investigation of the case, challan against the accused was presented in the Court of Illaqa Magistrate.

On appearance of the accused before the Court of the learned Additional Sessions Judge, Jind, the accused were charged for the commission of offence under Sections 302 and 342 read with Section 34 of the Indian Penal Code. The aforesaid charges were read over and explained to the accused, to which they pleaded not guilty and claimed trial.

During the course of trial, the prosecution relied upon the testimony of 13 PWs i.e.PW1-Dr. RK Singla, Medical Officer; PW2-Lilu; PW3-Kuldeep Gupta; PW4-ASI Chatter Singh; PW5-ASI Shishpal; PW6-Constable Jagdeep Singh; PW7-Ram Niwas Photographer; PW8-ASI Darbara Singh; PW9-ASI Giani Ram; PW10-Punjaba; PW11-Constable Sukhjit; PW12-Bhira; PW13-SI Ram Mehar and closed the case of the prosecution.

After the case of the prosecution was closed, the

statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, in which the entire incriminating evidence was put to them, to which they denied and pleaded false implication. They, however, pleaded that deceased Balwan was a vagabond, who used to take liquor daily and used to fight with everybody and that the whole village community was tired of his behaviour. Some cases were also registered against him and on that fateful night too he was in identical state and was probably beaten up by some unknown persons. Punjaba, the brother of the deceased, is not residing in Village Kharal. He does not have a house, vote or ration card in the village. He was summoned from Village Andana (Punjab) and a false case was registered against them. The dead body of the deceased was not found in the house of accused Ram Kumar.

The accused, however, proffered to lead evidence.

In defence, the accused examined DW1-Jasbir Singh; DW2-Tek Ram and DW3-Chander Pal and tendered the documents Ex.D1 to D3.

After going through the prosecution evidence, the learned trial Judge did not find favour with the prosecution version and acquitted all he accused by extending them the benefit of doubt.

Heard.

The learned trial court while evaluating the evidence of the prosecution was of the view that PW-Lilu, who according to the prosecution had last seen the deceased Balwan in the company of accused, testified before the court that the accused had not stated before him that they had committed a crime. He simply told that the inevitable had happened. In the cross-examination, Lilu stated that on the fateful day, he was on his

way from his house to his fields when he saw accused-Ram Kumar , his wife Raj Kumari and their daughter Ritu and persons called Giani, Raj Kumar, Sadhu and Jogia giving beatings to Balwan while dragging him towards the house of accused-Ram Kumar to teach an appropriate lesson to the deceased for sneaking into the house of Ram Kumar in the late hours. He further stated that on that fateful night, he had gone to irrigate his fields. His area is canal fed but it was not his turn for use of canal water on that night. He had decided to irrigate his fields with tubewell on that night whereas DW1-Jasbir Singh appeared and stated that there is no tubewell connection in the name of Lilu. He further stated that fields were situated towards the north of his house whereas the house of the accused was situated in the southern side of the Village, which does not fall on the way from his house to his fields. Then witness Lilu further stated that he had gone to the southern side of the village for calling his Siri, namely, Sinder Balmiki but he further stated that he was not available in the house so he decided to go to his fields all alone. Lilu was the main witness to complete the link of chain of circumstances, which would have raised an accusing finger against the accused but his testimony was not believed by the Court for the simple reason that he has been hobnobbing with his version. He had not taken any clear stand. So far as the statement of PW10-Punjaba is concerned, he was not the resident of Village Kharal but he was the resident of Village Andana. He was not a registered voter at Village Kharal. He does not know the name of the ward where his vote is registered in Village Kharal. He does not know the name of the member of the Panchayat from his ward in Village Kharal. He has admitted the fact that his brother Balwan was a vagabond, who had managed to create physical relations with Kumari Ritu.

PW-Lilu is his cousin. PW-Bhira is also his cousin. Ex.D1 is the copy of the voter's list of Village Andana in the State of Punjab whereas the name of Punjaba finds mention at Sr. No.278. Similarly, Ex.D2 is the fard jamabandi for the year 1999-2000 for Village Kharal whereas Ex.D3 is the fard jamabandi for the year 2001-2002 for Village Andana of District Sangrur wherein agricultural land is recorded in the name of Punjaba.

Independent witnesses, namely, Teka, Santraj, Ramkala and Kapoor Singh refused to support the case of the prosecution. Hence, they were given up by the prosecution.

Thus, the learned trial Court finds that the prosecution weaved a cock and bull story with no head or tail. PW-Punjaba was called from Village Andana after the dead body of Balwan was discovered lying unattended in the Village and accused were implicated on mere suspicion. While dis-believing the prosecution version, the learned trial Court acquitted the accused of the charges framed against them by extending the benefit of doubt.

Learned State counsel was unable to convince us as to how the judgment rendered by the learned Additional Sessions Judge, Jind suffers from any infirmity or the evidence brought on the record has been mis-interpreted by the Court.

In this view of the matter, no case for leave to appeal is made out and the same is hereby dismissed.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

November 23, 2006
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